

REMARKS:

Claims 1, 3-19 and 21-26 are pending. Claim 1 is amended. Claims 25 and 26 are new.

Claims Rejections under 35 USC § 102

Claims 1, 3-19 and 21-24 are rejected under for allegedly being anticipated by US 6,066,334. The Examiner has maintained the anticipation rejections because Applicants arguments have not been deemed persuasive. The Examiner asserts Applicants' recitation of the term "delayed release" is of no significance because it is part of the preamble and not contained within the body of the Claim 1.

In accordance with the Examiner suggestions, Claim 1 has been amended to incorporate the term "delayed release" into the body of Claim 1. Accordingly, Applicants assert that amended Claim 1 is novel over the art cited by the Examiner and favorable action is solicited.

Claims Rejections under 35 USC § 103

Claims 1, 3-19 and 21-24 are rejected for allegedly being unpatentable over the combined disclosures of US 6,066,334 and US 4,837,032. The Examiner believes one of ordinary skill in the art would be motivated to combine the greater amounts of polyvinyl pyrrolidone and polyvinyl acetate of US 4,837,032 with the active agent of US 6,066,334.

To establish *prima facie* obviousness, the examiner must show in the prior art some suggestion or motivation to make the claimed invention, a reasonable expectation for success in doing so, and a teaching or suggestion of each claim element (*see, e.g., In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ 2d 1941 (Fed. Cir. 1992); *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986); *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)).

Applicants respectfully reassert the arguments as set forth in their previous response. Further, Applicants have amended Claim 1, as discussed above in the 102 rejection section, to include "delayed release" in the body of said Claim. Further still, Applicants assert the following for traversal of the instant 103 rejections.

In regards to the Examiners comments to our previous arguments, Applicants reemphasize that US 4,837,032 fails to suggest using the formulated mixture of PVP and PVAc. US 4,837,032 only discloses that both polymers are part of an overall formulation that, *inter alia*,

contains these two polymers. The cited art's mixture is completely different from the formulated mixture of PVP and PVAc of the instant invention which is a two-component formulation that is subsequently formulated with other components. By formulating PVP and PVAc together prior to admixing with the other components, an intimate mixture of the said two copolymers is formed (*See*, instant Specification, page 3, lines 17-21). In simple terms, US 4,837,032 does not disclose the same binder. The Examiner is directed to Example 1 of the cited art wherein cellulose acetate phthalate, PVP and active ingredient are granulated in the presence of an organic solvent, and the resulting granules are dried then subsequently mixed with PVAc and PVP and lubricant mixture. One of ordinary skill in the art at the time of filing would see how the cited art clearly shows that no formulated mixture of PVAc and PVP is used.

Further, in response to the Examiner's argument that US 4,837,032 suggests that increasing the amount of polymer will result in a slower release, Applicants point out again that in view of the fact that US 4,837,032 does not teach or suggest the same binder as the instant invention, a skilled artisan would not have reached the same conclusion as the Examiner since the formulated mixture is known as being useful in rapid release forms.

For at least the reasons expressed above, it is urged that the prior art references cited by the Examiner either singly or in combination fail to anticipate or suggest the present invention as defined by the Claims. Accordingly, a *prima facie* case of obviousness has not been established by the Examiner, and the rejection under 35 USC § 103 should be withdrawn. Favorable action is solicited.